IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION NO. 3095/1999

SHRI SUKHMAL KUMAR JAIN Vs. STATE OF RAJASTHAN & ANR.

Date: 08.11.2006.

HON'BLE MR. K.S. RATHORE, J.

Mr. Sandeep Saxena for the petitioner.
Mr. B.S. Chhaba, G.A. for the respondents.

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The short controversy in this writ petition is that the petitioner applied for appointment on the post of Teacher Grade-III under the category of handicapped quota but the petitioner was not given appointment on the said post as the certificate submitted by the petitioner has not been issued by the authorised person as per the provisions of law, therefore, the present writ petition has been preferred by the petitioner.

This Court at the time of issuance of notice, vide order dated 18.06.99, directed the respondents to appoint the petitioner provisionally on the post of Teacher and in pursuance of this interim order, the petitioner is continuing in service.

Now the controversy is with regard to the fact whether the certificate issued by the Professor cum

Head of the Department, E.N.T. Department, S.M.S. Hospital, Jaipur is valid or not? Vide this certificate, it has been certified that the petitioner is deaf.

Learned counsel for the petitioner referred Rule 7 of the Rajasthan Employment of Physically Handicapped Rules, 1976 (for short 'the Rules of 1976'). Rule 7(1)of the Rules of 1976 reads as under:-

> **7. Ascertaining the degree of disability and functional capacity of the Physically handicapped and relaxation from medical examination on appointment to Government service.**
>
> (1) A certificate of the physically handicapped shall be obtained from the Medical Officer not below the rank of:-
>
> (i) A reader in the concerned speciality where there is a Medical College;
>
> (ii) A junior Specialist in the concerned speciality or Chief Medical & Health Officer at Places where there is no Medical College.

Here in the instant case, sub-clause (i) of Rule 7(1) of the Rules of 1976 is applicable as the Professor cum Head of the Department, E.N.T. has issued the certificate. Thus, the certificate issued by the Professor cum Head of the Department, E.N.T. is valid and the petitioner is entitled to continue in service.

Learned counsel for the respondent State submits that rules are changed and as per the amended rules and the notification/advertisement issued on 15.06.98, it was made clear that the disability certificate should be given by the Medical Board.

Having considered the rival submissions of the respective parties and upon consideration of the existing rules, certificate of the physically handicapped should be certified by the Medical Board.

Since the petitioner under the interim order of this Court dated 18.06.99 is continuing in service till date and his services are regularised and confirmation order has also been passed, therefore, in the interest of justice, I deem it proper to direct the respondents to constitute a Medical Board to ascertain the fact whether the petitioner is physically handicapped or not? The petitioner is advised to appear before the Medical Board for examination and in case the Medical Board found that the petitioner is physically handicapped person, he may be allowed to continue on the post of Teacher Grade-III.

With these observations, the writ petition stands disposed of.

(K.S. RATHORE),J.

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